

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0289P

**Adjusted Gross Income Tax
Calendar Years 1990 and 1993**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, incorporated in New York on February 21, 1966 was audited for calendar year 1990 IT-20X and calendar year 1993. Upon audit it was discovered that the taxpayer erred after it became aware that it was not subject to Indiana adjusted gross income tax for the period ending December 31, 1993.

Taxpayer filed an amended 1990 IT-20X on May 25, 1995 to reduce adjusted gross income for a loss carryback from calendar year 1993, which the Department refunded. Upon audit, it was determined that IC 6-3-2-2.3 was added by P.L.70-1993, Sec. 6, and was retroactive to Jan. 1, 1993. This code section states in part that the activities performed by a commercial printer in Indiana for or on behalf of that entity:

...shall not cause that entity to have adjusted gross income derived from sources within Indiana for purposes of the taxes imposed by this chapter and IC 6-3-8, unless that entity engages in other activities in Indiana away from the premises of the commercial printer that exceed the protection of 15 U.S.C. 381.

Taxpayer requests that the department waive the negligence penalty.

I. **Tax Administration**— Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty because it filed an amended IT-20 for 1990 in 1995 after P.L.70-1993 went into effect.

Taxpayer, in a letter dated May 7, 1998 protested penalties assessed and states it consistently filed Indiana IT-20's for years prior to 1994 and that it was during taxpayer's tax year ended December 31, 1993 that IC 6-3-2-2.3, which granted tax relief for publishers using Indiana printing facilities was passed. It further states that when the IT-20 was filed for the year ended 12/31/93, the taxpayer did not have knowledge of the section's full application relative to its business in Indiana, and it therefore filed its return consistent with prior years. Because it had a net operating loss for the year ended 12/31/93, it filed a protective carryback refund claim to the tax year ended 12/31/90 in accordance with Indiana law. Further the taxpayer has had a good record with the State of Indiana over the years and feels that it should not be penalized for its oversight in connection with its application of the change in the tax law.

Taxpayer is sophisticated and should have been aware of the tax code changes. Therefore, its conduct does not show reasonable cause for waiving the penalty.

FINDING

Taxpayer's protest is denied.